

La Michoacana Natural, LLC v. Luis Maestre, et al.
U.S. District Court for the Western District of North Carolina
Charlotte Division
Case No. 3:17-cv-00727-RJC-DCK

EXHIBIT 3

DECLARATION OF LAURA L. CHAPMAN

**Transcript of Motions Hearing
Before The Honorable Robert J. Conrad, Jr.
United States District Judge
May 31, 2019**

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

LA MICOACANA NATURAL, LLC,) DOCKET NO. 3:17-cv-727
)
Plaintiff,)
)
vs.)
)
LUIS MAESTRE and ADRIANA TERAN,)
)
Defendants.)
)

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES DISTRICT COURT JUDGE
MAY 31, 2019

LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina

APPEARANCES:

On Behalf of the Plaintiff:

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On Behalf of the Defendant on Motion to Withdraw:

SONNY THAI TRAN, ESQ.,
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Huntersville, North Carolina 28078

ADRIANA TERAN, Pro Se
15008 Statesville Road
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INTERPRETING:

ENRIQUE ARTURO BOWSER

PROCEEDINGS

FRIDAY, MAY 31, 2019:

(Court called to order at 11:14.)

THE COURT: Good morning, everyone.

Would the attorneys present introduce themselves and tell me who you are representing.

7 MR. ANDERSON: Good morning, Your Honor. This is
8 Stephen Anderson on behalf of the Plaintiff La Michoacana
9 Natural, LLC, and its principal today is here with us,
10 Rigoberto Fernandez.

11 MR. ALLAN: Albert Allan on behalf of La Michoacana
12 Natural, Plaintiff.

13 THE COURT: Mr. Anderson, Mr. Allan, welcome.

14 MR. TRAN: Good morning, Your Honor. My name is
15 Sonny Tran on behalf of the Defendants for right now,
16 Mr. Maestre and Ms. Teran. They have made a desire to
17 represent themselves back in February which is why I presented
18 my motion for withdrawal. They are sitting behind me now with
19 an interpreter/family friend Mr. Enrique Arturo Bowser.

THE COURT: Very well.

21 Mr. Bowser, are you performing interpretation
22 services for the defendants at their request?

23 MR. BOWSER: Yes, sir.

THE COURT: And as needed?

25 || MR. BOWSER: Yes, sir.

1 THE COURT: If you would let me know if I am
2 discussing something that is difficult to be translated if you
3 need more time I will provide you with that.

4 MR. BOWSER: Thank you, Your Honor.

5 THE COURT: I have got at least three things in
6 front of me, Motion for Sanctions, Motion For Withdrawal, and
7 a Motion for Partial Summary Judgment, as well as I guess
8 combined with that, but possibly mooted by that is the motion
9 for a second preliminary injunction. I would like to take
10 those things in order.

11 Mr. Anderson, be glad to hear from you on the motion
12 for sanctions.

13 MR. ANDERSON: Thank you, Your Honor.

14 Looking back now it's been several months since that
15 was prepared. As I recall, the purpose for the Motion of
16 Sanctions was, quite frankly, because of the repeated failures
17 of the defendants to cooperate and participate in discovery in
18 this matter.

19 The various rulings by Judge Keesler in which he
20 indicated, for example, that if they did not comply that they
21 would have to pay monetary sanctions those were mandatory, but
22 he said they would waive them for the time being if they could
23 comply. We've had two or three other compulsion orders since
24 that time and we even extended voluntarily further time for
25 the defendants to respond to discovery including our offer to

1 withdraw the deemed admissions. But yet, they still have
2 continually failed to comply.

3 And the other issue, as I recall, involved a wayward
4 or backdated envelope sent by Mr. Tran in which the documents
5 themselves were signed having been served the 11th of
6 February, although the cover letter and the envelope itself
7 indicated February 12th.

8 THE COURT: Is what?

9 MR. ANDERSON: It's February 12th. The cover letter
10 inside the envelope and the envelope itself says
11 February 12th.

12 THE COURT: Okay.

13 MR. ANDERSON: So clearly that date wasn't correct.
14 And finally, the other thing if I'm not mistaken, it
15 flowed from Mr. Tran's Second Motion to Withdraw in which he
16 indicated that since he had been retained in this matter in
17 October that the defendants had failed to provide him with any
18 new information, yet he was able to convince Judge Keesler to
19 allow him to file a cross complaint. And, of course, we
20 contend that without any additional facts, how could he allege
21 matters in a cross complaint that weren't there before.
22 Again, as I recall, that's precisely what we did in this
23 motion. But, again, now that some time has gone by, to say
24 the least, I'm not nearly as hot as I was about it in
25 February. I'm much more interested in progressing on to

1 motion 64, particularly. Thank you for your time.

2 THE COURT: Mr. Tran.

3 MR. TRAN: Yes, Your Honor. As far as the incorrect
4 address that Mr. Anderson received, I was just relaying the
5 address that the defendant provided to me as far as his most
6 current and recent or best mailing address and forwarded that
7 along. There was no intent to misrepresent any addresses.

8 As far as the --

9 THE COURT: While we're on the subject of addresses,
10 what are the correct addresses?

11 MR. TRAN: The correct address should be -- it
12 should be 15008 Statesville Road, Apartment 88, Huntersville,
13 North Carolina 28078.

14 THE COURT: And that's the address for which
15 defendant?

16 MR. TRAN: Would like for all the correspondence to
17 be sent to. Yes, Your Honor.

18 THE COURT: All right. And with respect to the
19 other items in the sanctions motion.

20 MR. TRAN: Well, we feel that the Plaintiff's
21 counsel is misrepresenting the contents of what I mention in
22 my Motion to Withdraw.

23 I stated in my Third Motion to Withdraw that the
24 plaintiffs informed the defendants as early as October the
25 defendant would need to provide the undersigned with

1 additional evidence including, without limitation, the witness
2 names and contact information, addresses, so on and so forth.

3 Now, such statements cannot be reasonably construed
4 to mean that the defendants have provided their counsel with
5 no evidence to support their counterclaims but only that
6 the -- only that I had requested additional evidence for the
7 purpose of supplementing our initial disclosures and discovery
8 responses.

9 THE COURT: And where in this docket is there any
10 discovery response at all? I'm looking at a docket that goes
11 back to December of 2017 and the only litigation I see is with
12 respect to withdrawing as counsel. I don't see any -- I see a
13 lot of attempts by the magistrate judge to acquire responses
14 to discovery and other requests. I see no -- I see no
15 indication that that has ever been complied with.

16 MR. TRAN: Yes, Your Honor. I -- I came on board,
17 so to speak, at the -- around October of 2018. And I do
18 recall that there were some discovery requests and responses
19 that were made last summer before I came on board. And what
20 we were trying to do was obtain some additional information
21 for Plaintiff's counsel -- to respond to Plaintiff's counsel's
22 subsequent requests.

23 THE COURT: So if you could point to me in the
24 docket where there's been any compliance with the orders of
25 the Court or the requests of the plaintiff for discovery I

1 would appreciate it because I am looking. I can't find it.

2 MR. TRAN: Your Honor, what I do have for the file
3 that I was -- inherited, it appears that around the 16th of
4 August there were some responses to plaintiff's first set of
5 interrogatories.

6 THE COURT: The 16th of August of 2018?

7 MR. TRAN: Yes, Your Honor.

8 THE COURT: I have an order dated the 17th in which
9 there's an order compelling disclosure.

10 MR. TRAN: It looks like --

11 THE COURT: The order is mailed to the defendants.

12 MR. TRAN: Yes, Your Honor. It was mailed via U.S.
13 Mail.

14 THE COURT: And I don't see any compliance with that
15 order. There's a motion in September for sanctions because of
16 non-compliance.

17 But I don't see any compliance at all. I don't see
18 any compliance with discovery or any of the court's orders in
19 this case from 2017 until the present date. I don't see any
20 response, for example, for the Motion for Partial Summary
21 Judgment.

22 MR. TRAN: Your Honor, may I consult with the
23 defendant?

24 THE COURT: Sure.

25 I see that on February 28, 2019, the magistrate

1 judge ordered in response to a Motion for Sanctions for
2 Failure to Comply with Court Order and Stipulation concerning
3 Discovery. That the defendants were directed to file a
4 response to Plaintiff's Motion for Sanctions; failure to file
5 would result in the relief being granted.

6 The "Defendants, individually, shall file a response
7 to Defendants' Counsel's Third Motion to Withdraw as Counsel
8 indicating their position on counsel's request and providing
9 complete contact information for each Defendant. Failure to
10 file a timely response to the motion would lead to sanctions."

11 And that "Defendants were ordered to file responses
12 to Plaintiff's Motion for Sanctions Due to Defendants' Failure
13 to Comply with Court Order and Stipulation concerning
14 Discovery by March 12th. Individually file responses to
15 Counsel's Third Motion to Withdraw."

16 And I don't see anything in the record with respect
17 to responding to that Court Order.

18 MR. TRAN: Yes, Your Honor. It appears that when
19 the defendants submitted their responses to Mr. Anderson,
20 first set of discovery requests on -- on or around August 16,
21 2018 --

22 THE COURT: Are you talking about the tax returns?

23 MR. TRAN: Interrogatories, and request for
24 production of documents, and request for admissions.
25 Apparently that they -- before I became involved, they, the

1 defendants, on their own submitted a response. And I have a
2 certificate of service here that appears as they sent it via
3 U.S. Mail around August 16, 2018.

4 THE COURT: Mr. Anderson, did you receive that and
5 what did you receive?

6 MR. ANDERSON: Your Honor, going back to 2016 we've
7 had a number of motions.

8 THE COURT: Oh, I think they're talking about
9 August 16, 2018. Am I right?

10 MR. TRAN: Yes.

11 THE COURT: 2018.

12 MR. ANDERSON: Yes, I misspoke. But just the same,
13 we had Judge Keesler have several compulsion orders since
14 then.

15 THE COURT: Right. So I'm talking about this
16 August 16, 2018. What responses did you get to your discovery
17 requests, if any?

18 MR. ANDERSON: Yes. We did see some, but, as I
19 recall, I believe we have them in here if we need to, but I
20 think we've attached some of those to the motions.

21 As I recall, they generally were argumentative and
22 non-responsive and often ended with things like "We'll prove
23 that in court" or other statements that just did not respond
24 to the discovery requests themselves. That's why we brought
25 it back to the magistrate judge and he later found those were

1 inadequate and ordered them to supplement and/or provide
2 complete responses. And I believe that -- again, we've had
3 two or three orders since then on the same subject.

4 But we never received responses for the requests to
5 admissions. What we did receive here August -- okay. I have
6 something October 19th of '18. That was just initial
7 disclosures that were also inadequate.

8 It's been somewhat difficult because as I recall
9 that may be between the last attorney and Mr. Tran when they
10 sent them themselves with a cover letter from Ms. Teran.
11 There were a couple of tax returns attached, but none of the
12 documents were either identified to respond or correspond to
13 any of the document requests and none of the interrogatories
14 were completely answered. As I said, they were often
15 argumentative or non-responsive entirely.

16 There is a declaration on that subject in my Motion
17 for Sanctions, Your Honor, I believe, the initial one.

18 THE COURT: Document 64-10 appears to be a statement
19 by Ms. Adriana Maestre and a statement by Luis Maestre with an
20 attached Profit and Loss statement for January 16 to
21 December 31, 2016, a trial balance, general ledger for that
22 time period and tax returns.

23 That appears to be the sum total of the discovery
24 responses in this case. And it seems to be wholly inadequate
25 with respect to the orders, the various orders of the

1 magistrate judge, including the one I mentioned document
2 number 60.

3 Mr. Tran, where in the docket is there any
4 indication that the request to admit filed by the plaintiffs
5 have been responded to in any way by the defendants?

6 MR. TRAN: Your Honor, I don't see it on the docket.
7 But I do see, I guess, in our file that there was a response
8 to the requests for admissions. I'm just not certain -- I
9 can't confirm right now how and when it was submitted. But
10 there were some responses to their request for admissions, and
11 I have a couple of copies here to see maybe before I got
12 involved if Mr. Anderson's team has received these responses
13 to their RFAs.

14 THE COURT: Mr. Anderson, have you received any
15 responses to your request to admit?

16 MR. ANDERSON: Not that I'm aware of, Your Honor. I
17 don't have any in my file. And as the Court may note, Judge
18 Keesler ordered that both myself and Mr. Allan be served with
19 those. And Mr. Allan has attested that he has not received
20 any such documents either.

21 THE COURT: What order of Magistrate Judge Keesler
22 are you referring to?

23 MR. ANDERSON: That was the one following -- here it
24 is. It was the one following the revised pretrial case
25 management plan.

1 THE COURT: What's the docket number?

2 MR. ANDERSON: Fifty-four, I believe. I'm taking a
3 look real quick -- 54 -- no, that's not the one. Also it's a
4 stipulation, Your Honor. We had filed a stipulation in this
5 case, I believe that's number 50, in which the other side
6 signed and that said they would submit written responses to
7 myself and Mr. Allan. I believe that's document 50.

8 THE COURT: It is. And has there been anything
9 filed with respect to that?

10 MR. ANDERSON: No, sir. Just my own notice of
11 non-compliance.

12 THE COURT: Right.

13 MR. ANDERSON: It's also in Number 57, Your Honor.
14 That's the order I was referring to, page 2, numbered
15 paragraph 1.

16 THE COURT: In that order the magistrate judge
17 refers to the stipulation in document number 50 which was
18 filed on February 1st. And in that stipulation the defendant
19 is required to serve Plaintiff's attorneys, Mr. Anderson and
20 Mr. Allan, with full and complete responses, without
21 objections, to the First Set of Discovery previously compelled
22 by the Court.

23 And then there are listed Plaintiff's First Set of
24 Interrogatories to Mr. Maestre.

25 Plaintiff's First Set of Request For Production of

1 documents to Mr. Maestre.

2 Requests For Admissions, and Plaintiff's First Set
3 of Interrogatories to Adriana Teran.

4 Magistrate Judge Keesler, in that order advises, or
5 tells Mr. Tran to "advise his clients that continued failure
6 to fully participate in discovery in this matter will likely
7 lead to sanctions that might include dismissal of their claims
8 and/or a judgment in favor of Plaintiff."

9 So Mr. Anderson, my question to you is, what if
10 anything have you received from the defendants with respect to
11 the items set forth in the stipulation document number 50 as
12 reflected in Judge Keesler's order Number 57?

13 MR. ANDERSON: Nothing prior to the last motion
14 being filed. I understand that sometime in April of this year
15 a FedEx package came in from Mr. Maestre. However, frankly, I
16 did not even open it or look at it because we already had
17 motions for summary judgment pending, several orders that they
18 respond to the motion to withdraw and, frankly, we couldn't
19 take a deposition at that point so there really wasn't any
20 point in reading it.

21 But we did receive some additional documentation. I
22 just haven't considered it for purposes because, quite
23 frankly, if I may, the deal was that if they got us the RFA
24 responses by a date certain they would be deemed withdrawn
25 from the admissions. But since they didn't comply with that,

1 the admissions still govern and that's the basis in part for
2 our motion for summary judgment that they admit that basically
3 all of the allegations in the case and that their affirmative
4 defenses are not adequate.

5 THE COURT: But you're telling me as counsel of
6 record in this case you received some information you didn't
7 even look at it?

8 MR. ANDERSON: There was a FedEx package, again, it
9 was not sent to Mr. Allan. It was sent apparently by
10 Mr. Maestre directly. It was not initially delivered to my
11 office, but we did see it, and when I got it, I frankly didn't
12 know what to do with it.

13 THE COURT: Well, one thing you could have done with
14 it is look at it so that you could tell the Court what it was
15 so the Court would have that information.

16 MR. ANDERSON: I did go through it.

17 THE COURT: Wait, don't interrupt me.

18 MR. ANDERSON: I'm sorry.

19 THE COURT: I don't want to have to tell you that
20 again.

21 You filed a motion asking for relief from this
22 Court. If this Court has questions for you, you will listen
23 to it and try to answer those questions.

24 So one of the things you could have done is read
25 what you received.

1 MR. ANDERSON: I --

2 THE COURT: You've done it again. You will not
3 speak until I am done speaking. If I have to tell you a third
4 time, I will ask Mr. Allan to conduct this from this point
5 forward.

6 This is just -- so let me start a third time with
7 you, Mr. Anderson.

8 You could have read what you received. You could
9 have been aware of that so that when I asked you these
10 questions you could tell me the answers to them.

11 That's one thing you could have done. But
12 apparently you didn't do that.

13 MR. ANDERSON: Sir, I misspoke. I didn't say that I
14 didn't read it. It's just -- it didn't make sense. They
15 weren't responsive. They were a group of documents, some were
16 papers, some were pictures, but they did not correspond to any
17 discovery requests. There was no titles or covers or Bates
18 stamps. It was just a stack of paper that frankly I couldn't
19 make heads or tails of what it was supposed to be. It wasn't
20 identified. It wasn't certified, and it wasn't signed. It
21 wasn't sent by an attorney.

22 All I know is I got a package of paper in a FedEx
23 envelope that was not complying with the court order that
24 we've been waiting for. We had three, four, five court
25 orders. I don't know what I can do. When Pro Person sends me

1 a stack of paper, half of it was like phone book ads and
2 things. It was just no value in this case.

3 THE COURT: All right. I'm directing you to tender
4 under a separate pleading what you received in April of this
5 year. Is that your statement to the Court, you received
6 something in April?

7 MR. ANDERSON: It would be after March 15th, and
8 approximately around April 1st. We moved our office on
9 March 15th. That's the last time I filed in this court around
10 the 29th. So it came in around probably the 30th of March.
11 Just after I filed our last motion in this case, and again, it
12 was not signed by any attorney or any party. It was just a
13 FedEx --

14 THE COURT: When you're talking to me, you're going
15 to stand up --

16 MR. ANDERSON: I apologize.

17 THE COURT: -- and address the Court.

18 What were you saying?

19 MR. ANDERSON: It was just a FedEx package that had
20 been addressed to my office, that again, I think we even had
21 trouble identifying what file it went to. But we figured it
22 out based on the return envelope. There really wasn't
23 anything in there that was pertaining to this -- it wasn't a
24 response to any motion. It wasn't a response to discovery,
25 and it certainly wasn't a response to request for admission

1 that had been outstanding since June of 2017.

2 THE COURT: And your indication to the Court is that
3 it was sometime after you filed your motion for summary
4 judgment March 13, 2019.

5 MR. ANDERSON: Most definitely. Because we moved
6 our offices on the 15th and advised the Court of that. And
7 several days later I got a phone call from FedEx saying there
8 was an envelope there. And I later called, I spoke to Luis
9 Maestre and explained that he sent it to the wrong address.
10 He said he would resend it, and it showed up about seven to
11 ten days later, which I expect is around the 30th of March.

12 THE COURT: Mr. Tran can you -- do you have any
13 response to anything that we have been discussing with respect
14 to the information provided in this case by the defendants to
15 Mr. Anderson?

16 I see that Magistrate Judge Keesler extended time
17 until March 28th to respond to Plaintiff's second set of
18 discovery requests. Is there any indication that that order
19 was complied with?

20 MR. TRAN: I -- Yes, Your Honor. I double checked
21 my files and quickly conferred with the defendant. And I'm
22 not quite sure of what happened, what they did on their own
23 after I filed my first motion to withdraw in mid February. At
24 that time the defendants did indicate that they, for whatever
25 reason, they departed from what we had initially thought was a

1 path towards some type of resolution or settlement. So that's
2 why I filed my motion in mid February to withdraw because
3 there was a fundamental disagreement in how we wanted to carry
4 this matter out.

5 The defendants did indicate that they would retain
6 possibly separate counsel or translator that -- whose vision
7 would align with theirs and started to, I guess, proceed with
8 trying to respond with all the deadlines that we did
9 communicate -- that my office did communicate to the
10 defendants, and based on what I've seen so far, I'm not sure
11 to what extent that they did or didn't.

12 THE COURT: I do see where the defendants have filed
13 a pleading with the Court, subsequent your motion to withdraw,
14 recognizing their responsibility to provide information and
15 documents to opposing counsel because of the Judge. But we do
16 not have the information yet which was filed the fifth day of
17 March, document number 63.

18 I have considered this docket at length. I have
19 wrestled with the non-compliance as demonstrated for over a
20 couple of years with respect to the defendants' obligations in
21 litigation, both as a named party defendant, as well as a
22 cross-claiming plaintiff in which the defendants invoked
23 relief from this Court in their counterclaims. And I find
24 that this record is woefully deficient in terms of compliance
25 with numerous discovery and compulsion orders of the

1 magistrate judge, and a total abdication of responsibilities
2 as a litigant in this court to prosecute their own claim or to
3 respond appropriately to the numerous discovery requests,
4 including requests for admissions, orders to comply, warnings
5 of sanctions. And the defendants have been totally
6 contemptuous of their obligations to comply with Court orders,
7 to comply with discovery, to respond to discovery requests.

8 Therefore, I find that the plaintiff's Motion for
9 Sanctions is a valid one, and that the appropriate relief for
10 the failure to comply with the obligations under Rule 26 and
11 other obligations to prosecute claims and be responsive to
12 Court orders is to strike the defendants' amended answer and
13 counterclaims, and to find as established the requests to
14 admit that have been filed by the plaintiff.

15 I think the defendant has been, to a certain extent,
16 coddled for a long period of time in the hopes that at some
17 point they would recognize their obligations with respect to
18 discovery and to comply with the orders of the Court. They
19 have failed to do that, and the Court will, as a response to
20 that conduct, strike their amended answer and counterclaim,
21 and deem admitted the request to admit.

22 Mr. Tran, I will be glad to hear from you if there
23 is anything further you wish to say with respect to your
24 motion to withdraw.

25 MR. TRAN: Yes, Your Honor. Back in February, mid

1 February, as -- when I got involved the goal was, I thought
2 there was a chance for both sides to amicably resolve this
3 before getting to this point. I think Mr. Anderson and I had
4 a -- lots of lengthy discussions to find some middle common
5 ground to resolve this before we got to this point today.

6 And I think we got close sometime in February, and
7 that's when the defendant, I guess, changed their outlook or
8 how they wanted to move forward in this case. It was a little
9 bit discouraging for me because I put a lot of time and effort
10 in trying to bridge the two sides together to find some type
11 of middle ground.

12 But I have shown good cause to withdraw. The
13 client, the defendants here have consented, and we filed that
14 with the Court.

15 THE COURT: The Order I referred to filed March 11,
16 Defendants' Response to Third Motion to Withdraw.

17 MR. TRAN: I'm sorry, Your Honor.

18 THE COURT: The consent is that document you're
19 talking about, is that --

20 MR. TRAN: That would be docket number 53 filed on
21 February 15th, where the defendants signed and consented
22 allowing my withdrawal.

23 Furthermore, right around that time was when it
24 became apparent that the defendant and I had to -- had a
25 fundamental disagreement on how to move forward. It was

1 surprising to me and very discouraging at the same time. And
2 then also there was some, I guess, a financial, unreasonable
3 financial burden for me to continue on when the client, the
4 defendants here, were falling behind on their fees to the law
5 firm.

6 I believe as of February the defendant had
7 approximately \$2,300 in outstanding legal fees that doesn't
8 even account for the \$1,200 in discounts that I provided to
9 try to help the defendant along because I felt somewhat
10 optimistic that both sides would reach some type of compromise
11 in a settlement agreement. And Mr. Anderson and I did talk at
12 length about the terms in trying to finalize it, and I thought
13 we were very close.

14 Also at this point I don't feel like there would be
15 any type of undue delay. Up until my motion to withdraw, the
16 defendants have, to the best of their abilities, represented
17 themselves, tried to represent, and indicated to me and my
18 office that they would represent themselves and not want our
19 involvement due to our fundamental difference.

20 Their business is not an LLC or a corporation. They
21 are sole proprietors so therefore they would not be
22 representing another entity. They would be, in essence,
23 representing themselves.

24 I did file, and several on behalf of the defendant,
25 various documents, motions, briefs in opposition to motions,

1 and discovery requests -- or responses to discovery requests.
2 But again, back in February that's where the defendants and I
3 had some fundamental differences of opinions about the proper
4 course of action to take in this case.

5 And that's all I have for now, Your Honor.

6 THE COURT: I will grant the motion to withdraw. I
7 find that the defendants have indicated their consent to that
8 in a filed pleading, are here today, can represent themselves
9 from this point forward.

10 Mr. Tran, I would ask you to remain in court for the
11 balance of the hearing to render any assistance the defendants
12 wish to ask your advice, if you are comfortable providing that
13 advice. I am not telling you should or shouldn't. Your
14 motion to withdraw has been granted. But for convenience
15 sake, I would ask you to stay present in the courtroom for the
16 pendency of the hearing.

17 MR. TRAN: That won't be a problem, Your Honor.

18 THE COURT: And so at this point you are relieved of
19 your duties.

20 And Mr. Maestre and Ms. Teran are present here, and
21 have indicated their desire to represent themselves, and they
22 will do so from this point forward in the hearing.

23 Mr. Anderson, I will be glad to hear from you on
24 your motion for summary judgment.

25 Before you begin I would like to make sure that I am

1 on the same page as you. Apparently you have moved for
2 partial summary judgment. And if I'm counting up the counts
3 correctly, it's on Counts One, Two, Three, Four and Seven.
4 The first four being the Lanham Act causes of action, and the
5 seventh being the North Carolina Fair and Deceptive Trade
6 Practice Act Claim; am I right about --

7 MR. ANDERSON: Yes, Your Honor.

8 THE COURT: -- the extent of your motion?

9 MR. ANDERSON: We've withdrawn the copyright claim
10 because it would require another wrinkle in the filing,
11 meaning another, you know, more issues and more arguments.
12 Quite frankly, we just felt that if we could get some partial
13 summary judgment we would just dismiss that cause of action.

14 THE COURT: So that cause of action, give me the
15 complaint number.

16 MR. ANDERSON: I believe it is number 4. I'm
17 checking right now, sir.

18 Third is the dilution. We did not seek that, I
19 believe.

20 And the fifth is copyright.

21 THE COURT: Copyright is fifth.

22 The sixth cause of action is the North Carolina
23 Statutory Trademark cause. I don't believe that is argued in
24 your brief.

25 And then the eighth is -- what is the eighth?

1 MR. ANDERSON: I don't believe we mentioned the
2 eighth either. It was just the seventh because it's a state
3 registered trademark as well.

4 THE COURT: So I will be glad to hear from you on
5 causes of action One through Four and Seven.

6 MR. ANDERSON: Thank you, Your Honor.

7 Well, in this case my client owns a federally
8 registered trademark that consists of the words "La
9 Michoacana" 100 percent traditional and in female character.
10 They've had four or five marks that have been pending at the
11 USPTO since 2006. They are currently pending registration,
12 after all these years.

13 My client also, as you know, owns nine state
14 registrations for the words "La Michoacana," there are three.
15 For the design of an Indian girl there are three, and for the
16 combined mark, the words "La Michoacana, ES Natural," and an
17 "Indian girl," there are also three.

18 When I say "three," I'm referring to the goods and
19 services being, as I recall, ice cream, Class 30 for the ice
20 cream, Class 35 for the retail stores services, and Class 43
21 for restaurant services, if I'm not mistaken.

22 My client, in particular, the gentleman sits behind
23 me, Rigoberto Fernandez, began -- as you may know from reading
24 the brief, he's the great nephew of the creator of the La
25 Michoacana brand, who in 1942 came down a mountain in Mexico

1 with burro carts carrying ice pack, went to the middle of
2 town, mixed it into with milk and fresh fruits, opened up the
3 very first one in a little town called Tocumbo, Mexico, in the
4 State of Michoacan.

5 THE COURT: So the history is adequately set forth
6 in the briefing. Tell me with respect to each element of the
7 Lanham Act cases why you believe summary judgment is
8 appropriate.

9 MR. ANDERSON: Well, of course we have a registered
10 mark. That would indicate that it's got prima facia validity,
11 as well as the state marks. And the pending marks, again, we
12 have senior common law rights.

13 Mr. Fernandez opened his first store in Florida in
14 1999, grew it to about 17 stores in Florida before he moved
15 here in 2014, has since opened three stores here.

16 He has become very well known in the local
17 community. It's also a very well known national brand. But
18 more importantly it's an international brand that harkens back
19 to Mexico.

20 As I understand it from the documents that I have
21 received and the information I have received from the
22 defendants, sometime in 2015 I happened to be here in
23 Charlotte. Mr. Fernandez and I went to the store before it
24 was opened on Concord Parkway. I held up a business card and
25 took a picture of the signage which was absolutely identical.

1 We sent a cease and desist letter. There were still
2 paint cans on the floor. And we said, "Please do not open up
3 an outfit that would interfere with my client's right to do
4 business exclusively here in the state." We were ignored.

5 THE COURT: That was in December of 2015?

6 MR. ANDERSON: That's correct, sir.

7 And it was about a year later that I think we
8 brought this case against the defendants.

9 THE COURT: I think it was actually two years later,
10 if I'm not right.

11 MR. ANDERSON: That may be correct. Again, there
12 were a number of other, sort of, issues going on at that time.
13 But we filed the case in Florida. We were successful there,
14 very similar facts. Came over here, and this case has just
15 taken a lot longer than we all anticipated.

16 At the motion for summary judgment, I think this
17 Court may recall, we demonstrated triable validity of the
18 claims.

19 THE COURT: Are you talking about the preliminary
20 injunction hearing?

21 MR. ANDERSON: Yes, sir. That was, I believe, it
22 was a year ago today. As a matter of fact my plane indicated
23 it was a year ago today, that is, June 1st of last year. I
24 came in on May 30th. I thought that was strange. I flew the
25 same day.

1 Anyhow, in this case my client has senior common law
2 rights here in the State of North Carolina going back to 2014.
3 He's got registrations going back to 2014. Sometime beginning
4 of 2016 these folks began copying it, that is, the brand.
5 They use the same tag lines, the same color. Again, an
6 absolute knockoff of a specific design --

7 THE COURT: So what has changed, if anything,
8 between the preliminary injunction hearing last year and
9 today?

10 MR. ANDERSON: Good question.

11 The first thing we saw was that in as late as
12 October of last year the defendants were continuing to use
13 tags and logos that say "Paleteria La Michoacana" sometime
14 between October and November they changed it to "Paleteria La
15 Mexicana." We did not feel that was sufficiently
16 distinguished.

17 Also, as the Court has been advised, Mr. Tran
18 advised me in February of this year that the defendant owned
19 an additional four domain names that he had not disclosed
20 previously, that each contained the names "La Michoacana."
21 Two of them were dot MX, meaning they had dot com, dot Mexico.
22 One I believe was a dot com in the U.S. They're listed in
23 here.

24 But as I understand it, shortly after the
25 preliminary injunction was issued they took down two signs.

1 They left a few, it took us quite a while to get them to take
2 down the remainder. And again, we virtually had no
3 cooperation with discovery. And it's been like pulling teeth
4 to get them even to remove it from their invoices.

5 That is, if you buy an ice cream at their store you
6 will get a receipt that says "La Michoacana" or according to
7 Mr. Tran it now says "La Mexicana."

8 But again, we still consider that to be infringing,
9 confusingly similar designation for the same identical goods.

10 One other thing important to note, my client
11 expanded his third store in the Concord area. So they have
12 gotten actually a little closer. They used to be as far apart
13 as 12 miles, now I think they're about 2 miles apart, the
14 latest location.

15 There has been considerable dilution here in this
16 state. As I indicated earlier, my client's trademarks have
17 moved forward at the federal level and have been approved.
18 We're just continuing to wait and see those get registered.

19 But we were able to get one registered earlier this
20 year, and I identified that in the motion.

21 It's the La Michoacana an Indian girl design. It's
22 just a derivative of this one. She is sitting on a swing.
23 That's registration Number 5143039.

24 THE COURT: Talk to me about your damage claim.

25 MR. ANDERSON: Well, as the Court may be aware,

1 we're seeking damages, the maximum under the Cyber Squatting
2 Act of \$100,000 per domain times five domains owned by the
3 defendant.

4 Alternatively and/or in addition, we're seeking to
5 recover defendants' profits obtained pursuant to the Lanham
6 Act. As it indicates, if plaintiff can demonstrate the
7 profits it then becomes the defendants' burden to show any
8 offsets and costs it proved in the sale. Because we've seen
9 none of those, we can only go on the documents. Based on the
10 documents that we have, we have calculated to the best of our
11 ability the range of possible damages.

12 According to their, again, very questionable tax
13 returns, they also have inconsistencies within them, and the
14 documents signed by Ms. Teran and Mr. Maestre, which the Court
15 identified was docket 64-10, indicates that they made
16 somewhere between 66 -- \$62,616 and \$500,000 during the
17 roughly 3 year period between December 15 when they started
18 and December 18, which was last time we got any documents from
19 them.

20 And during that time it shows that they sold at
21 least 500 and -- about \$535,000 worth of infringing goods.
22 And without any offsets, if the Court were willing to treble
23 as the North Carolina statute requires, that would be damages
24 in excess of \$1.5 million.

25 I admit, under the circumstances, quite frankly, we

1 don't want to take that kind of money from the defendants. We
2 never did. We always offered them an opportunity to get out
3 the door a lot cheaper. But I cannot calculate what their
4 damages are without their cooperation. But the information
5 we've seen shows that they made at least 500 -- it's \$534,958.
6 So we call it \$535,000 in a 3 year period that they admit to,
7 and of course the five infringing domain names.

8 We're also requesting costs and attorneys fees
9 incurred in this case because we believe it's an exceptional
10 case. We believe it is so because not only did the defendant
11 fail to comply with the court order indicating that he was
12 enjoined, but I haven't even mentioned the trouble online.
13 They had a software program translated in five languages
14 available on Apple and Google in which they were using the
15 mark. And part of it provided biographical detail about their
16 store and the individuals, and part was a coupon buy six get
17 the next one free app. We're still not sure where that came
18 from or what happened to it. That was a pretty significant
19 issue.

20 Finally, without a doubt, after this case was
21 brought, after the defendant was aware of this action, he went
22 and bought four more domain names that directly infringed
23 ours. He actually went out after the case and attempted to
24 sell one of the domain names to a man in Panama for \$50,000,
25 and he listed it for sale on a domain auction site for \$85,000

1 after this case was pending. So certainly those constitute
2 bad faith.

3 And finally, with respect to bad faith, as the Court
4 is aware, they maintained addresses that were absolutely bogus
5 on the registrar. That is the domain registrar showed their
6 address was named Made Express at a PO Box in Statesville that
7 was incomplete and differs from any address that they provided
8 here.

9 The Article 27D of the U.S. Code indicates Cyber
10 Squatting bad faith can be found when you provide false
11 registry information. When you use a domain name in a way to
12 infringe the owner's rights or divert traffic of the internet
13 to a third party or their own site.

14 Quite frankly, just about six out of eight potential
15 rungs of bad faith were blatantly demonstrated, including
16 making at least two offers to sell these domain names for well
17 over 40,000, 85,000, which we believe therefore warrants the
18 \$100,000 per domain name that was granted in the famous
19 Pinehurst case here in North Carolina.

20 Was there anything else the Court would like me to
21 address?

22 THE COURT: Your claim for damages with respect to
23 January 1, 2018, to the present time, what evidentiary support
24 do you have for that?

25 MR. ANDERSON: The smattering of documents that we

1 provided -- that were provided by Mr. Tran, they were just two
2 weeks of sale in October that showed roughly, I don't know, a
3 couple hundred dollars. But even at that rate for the given
4 time, because the store is still open today, however, you
5 know, again, we're having trouble trying to determine what
6 types of damages because very frankly, in throwing a bone to
7 the defense, we just don't want to take a piece of every ice
8 cream they make. We just want them to stop using it, and we
9 want to get to recover the damages for the harm caused to my
10 client.

11 We would never intend to put them in the poor house.
12 But to the extent that they have, and I mean this, if it
13 weren't for the trademark no one would go to their store. The
14 ice cream is not that unique. It's the brand. It's like
15 Starbucks. If I hold up a cup of coffee, it's a 50-cent cup
16 of coffee until I go to Starbucks it's a \$5 cup of coffee and
17 people will line up for it.

18 So frankly, the only reason they have been using it,
19 the only reason they have been using our domain name, the only
20 reason they use our signage is to capitalize on the fame and
21 goodwill that my client and his predecessors have spent four
22 generations building. Thank you.

23 THE COURT: Mr. Maestre or Ms. Teran, is there
24 anything you wish to say or be heard from at this time in
25 response?

1 If you wish to talk to me in English, fine. If you
2 wish to give your remarks in Spanish and have the
3 interpreter -- and, sir, what is your name again?

4 MR. BOWSER: Enrique.

5 THE COURT: Enrique?

6 MR. BOWSER: Yes.

7 THE COURT: You can do it that way. Whichever works
8 best for you.

9 MR. MAESTRE: Thank you, Your Honor. Thank you so
10 much.

11 In the first time I come in this court, I come in a
12 lot intimidation to Mr. Anderson because one day before to
13 come in this court he come into looking for me on the -- in my
14 place, ice cream shop in Concord, very angry and intimidation
15 to the employee, intimidated to the employees. Because
16 employee knows authorization for -- he looking for me, and the
17 employee say, I don't know where is Luis. The camera
18 recording when Mr. Anderson say the employees and the
19 restaurant about 9:00 a.m, the restaurant not open. He opened
20 the door with no authorization. He go inside and say, where
21 is Luis? I don't know. Mr. Anderson say "fuck you" and what
22 he say the --

23 MR. BOWSER: Middle finger.

24 MR. MAESTRE: Yeah, middle finger to the employees,
25 say, "Luis I'm fired to this restaurant." I'm very nervous

1 when I look in the criminal record. The employees very
2 nervous too. When after this -- after this day and coming
3 here, very nervous to Mr. Anderson. He's one person -- he's
4 very nice person here in the court. But he's very terrible
5 person when coming to looking for me in the Concord place,
6 restaurant.

7 So I'm fine right now. I explain, give me
8 opportunity, Your Honor, to explain the situation. It is
9 coming to 2008 I open one little business in the Sweet Flea
10 Market in 2008. I sell Mexican candies, it's no corn,
11 popsicles, and put with La Linda Michoacana, and I have
12 document to Your Honor -- the manager to the restaurant -- the
13 manager to the flea market. I don't know it's possible you
14 can read it. When any store for the business popsicles, snow
15 cone, mini donuts, and the flea market (indiscernible) in 2008
16 before to the La Michoacana coming to Charlotte. I have no
17 idea if North Carolina had other place name Michoacana. But I
18 living in North Carolina for 2001. A lot of time living here,
19 but I open a very small business and the flea market Union
20 County in 2008 and put the La Michoacana.

21 After this, Your Honor, my customers -- a lot of
22 customers come into Concord City. The customers tell me,
23 "Hey, you Popsicle, you snow cone, it's very good. Why you no
24 open one small business for visit every day or whatever, not
25 only weekends." Because in the flea market open only Saturday

1 and Sunday. I'm talking to my wife, "Hey, it's good idea open
2 one business in Concord." When I'm saving money -- when I'm
3 ready to, about 2 year or 3 year after in 2016, and I need
4 investigate who is the owner to the La Michoacana, the logo
5 and the name. Who is the owner? Because I like the little
6 lady. My idea is put the little lady on the business, in the
7 front. I contact somebody in Mexico and the name is Alejandro
8 Andreish. Alejandro Andreish is the guy creation.

9 MR. BOWSER: He created the logo.

10 MR. MAESTRE: He created the logo. He talked to me,
11 Luis, I created the logo --

12 MR. ANDERSON: Excuse me, Your Honor. We have to
13 object on hearsay grounds to this testimony about some third
14 party in Mexico making allegations of some sort.

15 THE COURT: Overruled. I'll hear from you.

16 MR. MAESTRE: And Alejandro tell me, I have the
17 phone number to California -- Modesto, California. The owner
18 to the logo and the name Paleteria La Michoacana is in
19 Modesto, California. You need to contact this company.

20 Okay. Thank you.

21 I'm calling to Modesto, California. The name
22 company is Paleteria La Michoacana. I look on the website.
23 Everything perfect. You look at the --

24 MR. BOWSER: So he was aware about the little doll
25 at the website. It was registered. So he also asked the

1 manager Lorenzo Berretta who is in charge of the sales and
2 distribution for this company in Modesto, California.

3 MR. ANDERSON: Excuse me, Your Honor. He's neither
4 translating. He just started speaking English on behalf --
5 now we have this guy testifying.

6 THE COURT: What's the objection?

7 MR. BOWSER: I'm explaining the situation.

8 MR. ANDERSON: No foundation. It's pure hearsay.

9 THE COURT: Overruled. Goes to state of mind. I
10 will be glad to hear from you.

11 MR. ANDERSON: For the record --

12 THE COURT: I've ruled.

13 MR. MAESTRE: Sorry, Your Honor, sorry.

14 Lorenzo Baraza. Lorenzo, I'm sorry, I'm Lorenzo and
15 he's the manager, okay, the original manager. He say, I'm
16 living in Concord, North Carolina. I'm living in North
17 Carolina, and I have opportunity to open one restaurant, one
18 restaurant, Mexican grill, but I need to try to sell popsicles
19 and ice cream.

20 Lorenzo, is any problem if I put up the little lady
21 in the front? He say me for -- by phone --

22 THE COURT: So in your mind in 2008 you felt free to
23 sell the things that you were selling?

24 MR. MAESTRE: Yes.

25 THE COURT: Let's fast forward to 2015 you get a

1 cease and desist letter from the plaintiffs. At least at that
2 point you're aware that somebody objects to your selling in
3 the way that you've been selling.

4 MR. BOWSER: (Translating.)

5 Before the whole situation, yeah, he was fine
6 selling it. He had authorization until 2014 when he decided
7 to open the business.

8 MR. MAESTRE: Lorenzo say, "It's no problem because
9 the company is no right now in North Carolina. You can use
10 it. No problem with."

11 "Okay. Oh, thank you, Lorenzo."

12 Include the lady. When after Lorenzo arrived to
13 working the original Michoacana, I received the papers to
14 Mr. Anderson. I read the paper. I contact, again to
15 Mr. Lorenzo. "Lorenzo, what happened? I received one paper
16 saying he stop to use it, the little lady. Please tell me
17 this lady is for the Modesto, California, company or maybe the
18 owner here in North Carolina?"

19 He said, "No, Luis. Go to the website, Washington,
20 DC. I look in everything. The Court, the big Court in
21 Washington, all trademark -- Federal trademark for all United
22 States. The owner is only La Paleteria Michoacana in Modesto,
23 California."

24 I'm thinking, well, this company -- this company
25 said original owner to the lady and the name, so I am relax.

1 Maybe people, I don't know what happened, but I'm talking to
2 the original owner.

3 Right now, Your Honor, this company here right now
4 in North Carolina, this company is right now put the research
5 with this logo and the name for about 125 supermarket,
6 restaurant, barber shop, he put everything. I don't know if
7 Mr. Anderson had --

8 MR. BOWSER: He knows if he's aware of that and is
9 he gonna go up against all those?

10 THE COURT: What Mr. Anderson is going to do or not
11 going to do with respect to somebody else is not before this
12 Court.

13 MR. MAESTRE: All right. So now, Your Honor, this
14 company Paleteria La Michoacana is distribution --

15 MR. BOWSER: Is distributing.

16 MR. MAESTRE: Distributor the popsicles come into
17 the logo on the side and the logo say AR --

18 MR. BOWSER: The trademark.

19 MR. MAESTRE: Trademark. I go see Wal-Mart sells
20 this, Sam's Club sell this, a lot of supermarket, Latino
21 supermarket right now sell this.

22 On the windows -- on the windows to the supermarket
23 have the big lady outside the window say "Paleteria La
24 Michoacana sell here."

25 The lady, big lady, this lady, same lady, it's in

1 the window to the all supermarket right now, Latino
2 supermarket.

3 So, Your Honor, I'm 100 percent the company Modesto,
4 California, Paleteria La Michoacana is the owner to the name
5 and the little lady. Mr --

6 THE COURT: You keep looking at Mr. Anderson. I
7 need you to talk to me.

8 THE DEFENDANT: Yes, sir. I'm sorry.

9 Mr -- Your Honor, the popsicle, Rigoberto Fernandez,
10 in the place, North Tryon, the popsicles no have the little
11 lady. No have the logo. This logo in the popsicles, and the
12 paper popsicles. Why? Why can't use it? I need proof Mr --

13 THE COURT: Well, this time last year you -- whether
14 you think of it as proof or not -- you got an injunction from
15 me. This Court told you you couldn't do that anymore.

16 MR. MAESTRE: No, Your Honor. I have one year when
17 you say no use the logo. I no use the logo. I know use the
18 name. And the business say only ice cream and Mexican grill,
19 that's it. I have one year no use the name and no using the
20 little lady.

21 Mr. Rigoberto Fernandez, one day after the food
22 court here opened, one Michoacana, and two minutes to my store
23 in Concord, two minutes. I don't know why he opened one
24 Michoacana two minutes to my store.

25 So surprise the people come into my business and

1 don't care -- the people don't care, the ice cream, the people
2 like it, my tacos, my quesadilla, because my business is
3 restaurant. My business is restaurant. If I sell -- I sell
4 restaurant food, eat and sell to popsicles and ice cream to
5 the company Hershey's. Hershey's, this institution for me,
6 the ice cream. You understand me?

7 So I don't know Rigoberto Fernandez open for two
8 minutes. Right now Rigoberto Fernandez closed her business.
9 But I don't know. I don't know why it close. Because I no
10 use the name. I no use the little lady. But right now he
11 close her business, for I don't know for why.

12 But why Mr. Rigoberto Fernandez open one business in
13 two minutes to my restaurant? This is -- I don't know. It's
14 the way he come. I don't care. But the only different owner,
15 the people -- the people no confuse. My customers no confuse
16 because I restaurant and Mr. Rigoberto Fernandez is ice cream
17 shop. I'm restaurant. I sell food, Mexican food. So this is
18 the different because the people no confuse. The people
19 understand I sell the food. Mr -- Mr. Rigoberto sell
20 popsicles and ice cream. Because Rigoberto Fernandez no sell
21 food, no sell taco, no sell enchilada, no sell pupusas. I can
22 do it. I have authorization to sell food in this building,
23 Your Honor.

24 So owner --

25 MR. BOWSER: So he's asking you, plead to you or

1 beg, before you decide -- so he just ask for you to please
2 verify and, you know, do the diligence to find out about the
3 logo that is -- that Mr. Modesto -- well, what's his name?

4 MR. MAESTRE: Rigoberto.

5 MR. BOWSER: I'm sorry. Is not the current owner of
6 the logo trademark nationwide. Might be registered as a
7 business owner in the State of North Carolina. Might have
8 some type of just state trademark for the doll. But in this
9 case he also was saying that he felt that he was targeted, you
10 know, for no reason as in everybody uses the logo to sell the
11 popsicles really, and he's just --

12 (Mr. Maestre speaking to the interpreter.)

13 MR. BOWSER: He considers that he did the right
14 thing by opening his business.

15 MR. MAESTRE: In Concord.

16 MR. BOWSER: And looking for the right people to ask
17 for guidance about the name and the logo. The name that he
18 decided to use is not the same as well, you got to see, it is
19 La Linda La Michoacana.

20 He's explaining to me about how he has never been in
21 a situation like this. So he didn't -- doing his compliance
22 with the Court, in some cases when he -- the first time that
23 he went to a discovery without even knowing they existed by
24 Mr. Anderson was told to him he wasn't even there at the first
25 court.

1 THE COURT: So one of the pieces of confusion for me
2 is exactly -- there seems to have been something sent by you
3 directly to Mr. Anderson sometime after March of this year and
4 I would like to know what you sent him.

5 MR. BOWSER: What date was that?

6 THE COURT: It was represented to me April of this
7 year.

8 MR. BOWSER: Yes, Your Honor. He been working with
9 Ms. Andrea Serrano (ph.sp.) She been working with him,
10 helping him do the paperwork, filling out paperwork, getting
11 more information, sending information to Mr. Anderson. At
12 this moment she's not in the state. She's out of the state,
13 business trip, but that's who he been getting help from
14 sending the court information.

15 THE COURT: What did he send?

16 MR. BOWSER: So basically it was a motion sent about
17 basically how much money he makes. And all that information
18 was sent by the lawyer. And some of those paper -- some of
19 that paperwork that was sent by FedEx did not get in time
20 because of the office, it was changed, or it was not opened.
21 There was a lot of attempts by Fedex to deliver the
22 information or the motion, and Mr. Anderson's office was
23 closed but eventually they did get that information.

24 THE COURT: What information?

25 MR. BOWSER: The questions that Mr. Anderson wanted

1 to know about how much he made.

2 THE COURT: Mr. Maestre, did you keep copies of the
3 information you sent to Mr. Anderson?

4 MR. BOWSER: He does not have a copy at the moment.
5 He believes all the information copy his current lawyer that
6 is not here has that information. And he does believe that we
7 have -- they have sent all the information or motions they
8 been requested by Mr. Anderson at this time. Sometimes but
9 like due to the move they didn't get some of the information
10 on time. Other than that, all the information been sent on
11 time.

12 Mrs. Serrano, this is what she done for me. Just
13 have a binder with all the motions and paperwork is last thing
14 she did for me.

15 THE COURT: Thank you.

16 Mr. Maestre, and Ms. Teran, and Mr. Anderson, I will
17 take all this under advisement.

18 When I rule on the motions for summary judgment,
19 that's the ruling of the Court. And if, of course, either
20 side can appeal anything I do. But when I rule, that's the
21 ruling and there may be aspects of the ruling that direct
22 parties to do or not do certain things. And people get in
23 trouble when they -- they are directed to do or not do
24 something, and they ignore it, or they do opposite. I would
25 ask each of the parties to talk with their lawyers about the

1 significance.

2 There is a preliminary injunction in place governing
3 certain relationships and certain conduct in this case. And
4 conduct inconsistent with that injunction is -- could be
5 contempt of court. And I would ask the attorneys for the
6 parties to discuss the significance of that.

7 Mr. Tran, you're not an attorney now -- you're not a
8 representative of the defendants now but I would ask you to
9 have that conversation with them.

10 You are both here, and I don't know if there is any
11 good -- if there is any reason either side thinks would be
12 helpful, there are conference rooms on either side of the
13 courtroom.

14 I'm taking this under advisement.

15 Mr. Anderson, I am directing you to file a pleading
16 with the Court by the end of the week indicating when you
17 received the documents from the defendant and providing a copy
18 of those documents as a pleading in this case.

19 MR. ANDERSON: Yes, Your Honor.

20 THE COURT: And the remaining issues I will take
21 under advisement.

22 Anything further from either side?

23 MR. ANDERSON: I would request that the motion for
24 preliminary injunction as to the remaining domain names be
25 granted. I hate to see him make a change in ownership

1 between -- it's already been three months since we moved for
2 it, but I just hate to see --

3 THE COURT: So is that part of your -- so that's
4 before me on the second --

5 MR. ANDERSON: The second motion.

6 THE COURT: Yeah. So I've got that under
7 advisement.

8 MR. ANDERSON: We're just requesting that he be
9 ordered not to transfer, divest himself or otherwise --

10 THE COURT: Yes. You've asked for that and that's
11 under advisement.

12 MR. ALLAN: Your Honor --

13 THE COURT: I'm sorry. Mr. Allan.

14 MR. ALLAN: I'm sorry. Point of clarification. You
15 asked Mr. Anderson to provide the information to the Court by
16 the end of the week.

17 THE COURT: Yes.

18 MR. ALLAN: This being Friday, he has to travel back
19 to California. Could we have a couple extra days?

20 THE COURT: Yeah, I was mixed up. This is Friday.
21 It doesn't feel like Friday.

22 MR. ANDERSON: I assume seven days from today?

23 THE COURT: No. No. No. I want this -- I want
24 this -- it shouldn't take you very long to --

25 MR. ANDERSON: No. I can probably get my staff --

1 THE COURT: Don't -- it shouldn't take you very long
2 to put a declaration together saying I got this on a certain
3 date and here it is. And so maybe the end of the day Monday
4 would be appropriate. All right.

5 MR. ANDERSON: Your Honor, I would ask for Tuesday.
6 I have a deadline on the second that I'm kind of chasing right
7 now.

THE COURT: Yes. I have already ruled on that.

9 || (The matter is concluded at 12:40.)

10 * * * * *

11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF NORTH CAROLINA
CERTIFICATE OF OFFICIAL REPORTER

I, Laura Andersen, Federal Official Court Reporter,
in and for the United States District Court for the Western
District of North Carolina, do hereby certify that pursuant to
Section 753, Title 28, United States Code that the foregoing
is a true and correct transcript of the stenographically
reported proceedings held in the above-entitled matter and
that the transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Dated this the 13th day of November 2019.

23 S/Laura Andersen
24 Laura Andersen, RMR
Federal Official Court Reporter